

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 18-20249

Alexis Redd Rodgers,

Honorable Sean F. Cox

Defendant.

_____/

ORDER
REGARDING DEFENDANT’S JULY 1, 2019 FILING

Defendant Alexis Redd Rodgers pleaded guilty to drug offenses and was sentenced by this Court on April 10, 2019. Rodgers has not filed a direct appeal.

Acting *pro se*, Rodgers sent a written request to this Court, that was filed on the docket on July 1, 2019, asking this Court to vacate his sentence and impose a reduced sentence.

Although Rodgers’ request did not cite the legal authority under which he asked this Court to vacate his sentence, the relief requested is consistent with a motion to vacate sentence under 28 U.S.C. § 2255 and is therefore the equivalent of a petition under § 2255. Before characterizing Rodgers’ written request as a § 2255 motion, however, he must be given the opportunity to withdraw the filing. *See In re Shelton*, 295 F.3d 620, 622 (6th Cir. 2002). This is because “[a]n unintended byproduct of [liberally construing *pro se* filings as § 2255 petitions] . . . is that it may effectively deprive an uninformed *pro se* litigant of the future opportunity to file a motion to vacate his sentence under § 2255.” *Id.* at 621. After a prisoner files one motion under § 2255, the Antiterrorism and Effective Death Penalty Act generally prevents a prisoner from

filing a second or successive § 2255 motion. Thus, the prisoners must be aware that the Court's construction of their petition may limit their ability to pursue future avenues of collateral relief and must be given the opportunity to either agree with the Court's construction or withdraw their motion.

Accordingly, this Court ordered Rodgers "to file a one-page memorandum on or before **August 30, 2019**, indicating whether he agrees with the Court's intended characterization of his written request or whether he wishes to withdraw that request." Rodgers has since filed a written response, indicating that he does NOT wish the Court to construe his July 1, 2019 filing as a § 2255 motion. (*See* ECF No. 95) ("The letter that I wrote was not intended to be filed as a 2255 motion. I wrote the July 1st letter as a Prayer Letter.").

As such, the Court will not construe Rodgers's July 1, 2019 submission as a motion and will take no action on it.

IT IS SO ORDERED.

s/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: July 30, 2019